

Application No. 10/702,431
Attorney Docket No. 032032

REMARKS

Claims 1-7 are pending in the application. By this Amendment, claim 1 has been amended. It is submitted that this Amendment is fully responsive to the Office Action dated November 13, 2007.

Claim Rejections - 35 U.S.C. §101

Claims 1-7 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

This rejection is respectfully traversed. With regard to Applicant's request that the Examiner shows, by indicating a corresponding portion of MPEP or applicable case law, for example, a rule or legal precedence upon which the Examiner relies to support her position that if all elements or features of the claimed subject matter of the plant operation device could be implemented in software alone, claims are directed towards a non-statutory subject matter, the Examiner now relies on several case laws and rejects claims 1-7 under 35 U.S.C. §101.

Specifically, the Examiner alleges that the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 U.S.C. §101 (see page 2, item 4 of the Action).

However, claim 1, now amended, recites:

A plant operation supporting device comprising:
a personal computer...

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Thus, it is submitted that amended claim 1 includes a physical element.

MPEP

Next, the Examiner alleges that the descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material” and both types of “descriptive material” are nonstatutory when claimed as descriptive material *per se* by relying on *In re Warmerdam*, 33 F.3d 1354, at 1360 (Fed. Cir. 1994).

However, the Examiner’s allegation appears to be beside the point as discussed below.

The Examiner appears, while it is not explicitly indicated, to rely on MPEP “**2106.01 Computer-Related Nonstatutory Subject Matter.**” This section of MPEP describes:

>Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” In this context, **“functional descriptive material” consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of “data structure” is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) **“Nonfunctional descriptive material” includes but is not limited to music, literary works, and a compilation or mere arrangement of data.**

Both types of “descriptive material” are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759.

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Next, the subsection "**I. FUNCTIONAL DESCRIPTIVE MATERIAL: "DATA STRUCTURES" REPRESENTING DESCRIPTIVE MATERIAL *PER SE* OR COMPUTER PROGRAMS REPRESENTING COMPUTER LISTINGS *PER SE*"** describes:

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer.

Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed.

In summary, the discussions of **MPEP 2106.01: Computer-Related Nonstatutory Subject Matter** are solely directed to and limited to subjects:

- A. "functional descriptive material"
 - A-1. data structures representing descriptive material *per se*
 - A-2. computer programs representing computer listing *per se*
- B. "nonfunctional descriptive material"
 - B-1. music
 - B-2. literary works
 - B-3. mere arrangement of data

On the contrary, the present claims are for a device, that is, a machine which falls within the subject matter of 35 U.S.C. §101, and does not constitute any of the listed classification of "functional descriptive material" and "nonfunctional descriptive material" of MPEP.

Therefore, the Examiner appears to misunderstand MPEP 2106.01 and incorrectly apply it to the present claims.

In re Warmerdam

Moreover, even if relying on *Warmerdam*, the present claims should be patentable subject matter since the present claims are for a device.

The court of *Warmerdam* clearly explains the issue of this case as:

the dispositive issue for assessing compliance with §101 in this case is whether the claim is for a process that goes beyond simply manipulating “abstract ideas” or “natural phenomena” (*Id.* at 1360 emphasis added).

The claims at issue in *Warmerdam* are mainly claims 1 and 5:

1. A method for generating a data structure which represents the shape of [sic] physical object in a position and/or motion control machine as a hierarchy of bubbles, comprising the steps of:

*first locating the medial axis of the object and
then creating a hierarchy of bubbles on the medial axis.*

5. A machine having a memory which contains data representing a bubble hierarchy generated by the method of any of Claims 1 through 4.

With regard to method claim 1, the court states:

The body of claim 1 recites the steps of “locating” a medial axis, and “creating” a bubble hierarchy. These steps describe nothing more than the manipulation of basic mathematical constructs, the paradigmatic “abstract idea” (*Id.*).

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On the contrary, with regard to machine claim 5 which recites “*A machine having a memory which contains data representing a bubble hierarchy generated by the method of any of Claims 1 through 4*,” the court states:

Claim 5 is for a machine, and is clearly patentable subject matter (*Id.* emphasis added).

Therefore, even if relying on *Warmerdam*, claim 1 in the present application should be patentable subject matter since claim 1 is for a device which comprises a personal computer.

In summary, since the Examiner incorrectly interprets and applies MPEP and the decision of *Warmerdam*, withdrawal of this rejection is respectfully requested.

Claim Rejections - 35 U.S.C. §102

Claims 1-7 are rejected under 35 U.S.C. §102(b) as being anticipated by Sonobe et al. (USP 5,377,309) (herein referred to as Sonobe).

This rejection is respectfully traversed. Claim 1, now amended, recites “*procedure constructing means for constructing a working operation procedure in a logic chart format*.”

This Amendment is supported by the specification (page 8, lines 17-23). It is submitted that Sonobe is silent regarding the above mentioned features of claim 1.

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Specifically, with regard to the feature of “working operation procedure described in a logic chart format,” the Examiner relies on column 15 line 63 to column 16, line 31 of Sonobe. However, these descriptions and accompanying Figs. 18A and 18B merely disclose that a logic chart diagram 140 is stored into a work knowledge storer 2 with or without format-conversion by a converter 141.

Furthermore, Fig. 18A of Sonobe discloses that the logic chart diagram 140 has been already prepared and stored in a memory device. Therefore, Sonobe does not disclose explicitly or inherently “procedure constructing means that constructs a working operation procedure in a logic chart format.”

Accordingly, claim 1 distinguishes over Sonobe.

Claims 2-7 are dependent from claim 1 and recite the additional features set forth therein. Accordingly, claims 2-7 also distinguish over Sonobe for at least the reasons set forth above.

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In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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